

National Health Care, L.P., d/b/a Palm Garden of North Miami and UNITE! (Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC). Cases 12-CA-17986, 12-CA-18357, and 12-RC-7931

March 31, 1999

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

BY MEMBERS FOX, LIEBMAN, AND BRAME

On January 30, 1998, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

Contrary to our dissenting colleague, we adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by soliciting grievances and promising to remedy them at the Palm Garden, Florida facility involved in this organizing campaign. The evidence shows that Harold Bone and Jerry Campbell, two high-ranking officials who did not usually work at Palm Garden, di-

rected the Respondent's antiunion campaign there. The judge found that Campbell used a "methodical approach" in which he attempted to speak with nearly every unit employee. Thus, when Bone and Campbell saw Irvine Gabeau and two other unit employees in the hallway of the Palm Garden facility, they asked the employees how they were doing. The employees complained about a lack of manpower, to which the Respondent's officials replied that they were considering hiring more employees. Either Bone or Campbell also mentioned hearing that there was a "third party" who wanted to enter the facility. The Respondent hired four additional unit employees about the time of this discussion.

Although Campbell had a practice of discussing working conditions at another facility that he managed, the judge found that he had never done so at Palm Garden. Further, the Respondent's officials' casual greeting to the employees was not innocuous, as our colleague concludes. When Campbell or Bone asked them how they were doing, the employees clearly understood that the Respondent's officials were soliciting their grievances and responded accordingly. As the Board held in *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), *enfd.* 457 F.2d 503 (6th Cir. 1972):

Where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary [footnote omitted].

The Respondent in this case did not rebut this inference.³ Rather, to the contrary, the Respondent's officials told the employees that it was considering hiring more employees. In case the employees missed the message of this implied promise of benefit, either Bone or Campbell referred to the existence of a "third party" on concluding the conversation. For these reasons, we agree with the judge that the Respondent's conduct violated Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, National Health Care, L.P., d/b/a Palm Garden of North Miami, North Miami, Flor-

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act during the mock contract negotiation it conducted in the presence of the unit employees, we find it unnecessary to rely on the judge's comment in sec. II.C.1, of his decision that the Respondent's official, Jerry Campbell, told a "lie" when he said, on conclusion of the negotiation, that he had done "the best he could" while acting as the union bargaining representative. While the word "lie" was perhaps extreme, nevertheless Campbell was certainly disingenuous in stating that he had done "the best he could" to represent the interests of employees in the mock negotiation which, as the judge found, was scripted to gratuitously portray the union representative as incompetent and ineffectual, as well as to create the impression that it would be futile for the employees to select union representation.

In adopting the judge's finding, in sec. II.C.2.b, of his decision, that the Respondent unlawfully discharged employee Marie Sylvain, we rely on *Husmann Corp.*, 290 NLRB 1108 fn. 2 (1988), for the proposition—fully applicable in the instant case—that failure by an employer to investigate an employee's claim that the employee complied with the employer's procedures, may belie, or at least undermine, the employer's claim of a good-faith belief that the employee violated those procedures.

Because no party has excepted to the judge's refusal to recommend the issuance of a bargaining order, we find it unnecessary to pass on the Respondent's exceptions concerning the validity of certain authorization cards that the General Counsel submitted into evidence in an attempt to establish the Union's majority status.

³ See, e.g., *Coronet Foods*, 305 NLRB 79, 85 (1991), *enfd.* 981 F.2d 1284 (D.C. Cir. 1993). Cf. *Uarco, Inc.*, 216 NLRB 1, 1-2 (1974) (inference of promise of benefit "negated" by express statement that no promises could be made).

ida, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that the election held April 3, 1996, in Case 12-RC-7931, is set aside and that this case is severed and remanded to the Regional Director for Region 12 for the purpose of conducting a new election.

[DIRECTION OF SECOND ELECTION omitted from publication.]

MEMBER BRAME, concurring in part and dissenting in part.

Contrary to the majority, I would reverse the judge and dismiss the allegation that the Respondent violated Section 8(a)(1) of the Act by soliciting grievances and promising to remedy them. In the remaining respects, I agree with my colleagues' decision, except that my rationale for finding that the Respondent unlawfully promised benefits is set forth below.¹

1. The judge found that, in February and March 1996, the Respondent's agent, Cynthia Lewis, conducted several antiunion meetings with employees in a park close to the nursing home. Based on credited testimony, the judge found Lewis informed employees that, if the employees selected the Union to represent them, wages and benefits would be frozen, and that this threat violated Section 8(a)(1) of the Act. He further found that, contrariwise, Lewis told the employees if the Union did not enter its facility, "Palm Garden will try their hardest to keep the employees happy." This statement, the judge concluded, also violated Section 8(a)(1), as a promise of benefit.

I agree with the judge and my colleagues that both statements were unlawful, but conclude that the latter transgressed the Act only in context. In *HarperCollins San Francisco v. NLRB*, 79 F.3d 1324, 1330 (9th Cir. 1996), the court observed that "An employer violates Sec. 8(a)(1) of the [A]ct when it grants or promises to

grant benefits to discourage employee support for a union." There the court noted testimony that the employer's CEO, Craig, inter alia, in a speech to nonmanagement employees, threatened them with plant closure if they selected the Union to represent them, and upheld the Board's finding of an unfair labor practice. The court also upheld the Board's conclusion that Craig violated the law in the same speech when he declared "if [the employees] dropped this union bullshit, then he would sit down and discuss our problems and that [the employees] would find that he's a very good listener." In so holding, the court stressed the remark was unlawful "[g]iven the context of Craig's speech," which included the threat of plant closure.

Similarly, I find here that the statement by Lewis that "Palm Garden will try their hardest to keep the employees happy" if they did not select the Union, was unlawful in context as it was coupled with a plain threat by Lewis to employees that the Respondent would retaliate by freezing their pay and benefits if they selected the Union. The Respondent clearly intended to send, and did send, employees the message that rejection of the Union would be attended by positive consequences, just as its selection would bring negative consequences in its train.

Statements alleged to violate Section 8(a)(1), however, must be judged "under all the circumstances." See, e.g., *NLRB v. Grand Canyon Mining Co.*, 116 F.3d 1039, 1044 (4th Cir. 1997). Thus, the Board has found lawful employer statements asking that employees give it a "second chance to see if they could make things better," on the basis that "Generalized expressions of this type, asking for 'another chance' or 'more time,' have been held to be within the limits of permissible campaign propaganda." *National Micronetics, Inc.*, 277 NLRB 993 (1985) (footnote citation omitted), cited recently with approval in *Noah's New York Bagels, Inc.*, 324 NLRB 266, 267 (1997). I am persuaded that the full circumstances under which the alleged promise was made dictate a finding of unlawful conduct in the case at bar.

2. Regarding the 8(a)(1) allegation on which I dissent from the judge's and my colleagues' findings, the evidence shows that Harold Bone, who is the Respondent's assistant vice president for partner relations, was responsible for directing the Respondent's election campaign at the Palm Garden facility involved in this case. Jerry Campbell, the administrator at the Respondent's St. Petersburg, Florida facility, spent several days each week at Palm Garden assisting Bone.

About March 10, 1996,² Campbell and Bone approached charge nurse assistant Irvine Gabeau and two other employees in the hallway of the nursing home. Gabeau credibly testified that either Campbell or Bone asked the employees how they were doing; they replied,

¹ Although the judge stated in fns. 3 and 23, respectively, of his decision that he would not credit employee Marie Sylvain's testimony unless otherwise corroborated or not specifically denied, and that he would not draw an adverse inference based on the Respondent's failure to call its former assistant director of nursing, Vicki Chillon, as a witness, the judge nonetheless found, based solely on Sylvain's testimony, that Chillon's statement to Sylvain that the Respondent discharged her for union activity confirmed the Respondent's unlawful motivation and also independently violated Sec. 8(a)(1) of the Act. In adopting the judge's findings of these 8(a)(1) and (3) violations, I stress that the Respondent has not shown that Chillon was unavailable to testify as a witness in this case.

Additionally, the judge found in sec. II.C.1, of his decision that the Respondent further violated Sec. 8(a)(1) of the Act when its administrator, Dian Johnson, affirmed Chillon's statement regarding the motivation for Sylvain's discharge by telling Sylvain, who had reiterated her conversation with Chillon to Johnson, that what Chillon had said was "okay." Although Johnson's simple response of "okay" that constitutes this violation was rather vague as an affirmation of Chillon's earlier unlawful statement, the Respondent called Johnson as a witness here and she did not testify regarding this conversation with Sylvain. On this basis, I join my colleagues in finding this violation.

² All dates are in 1996, unless otherwise noted.

“fine,” and either Campbell or Bone asked about their job. As the judge found, Campbell regularly engaged in discussions with employees regarding working conditions at the St. Petersburg facility he managed. After the employees, according to Gabeau, told the Respondent’s officials that they could use more help on the job, either Bone or Campbell, Gabeau did not know which one, replied that the Respondent was considering hiring more people. Gabeau further testified that one of the managers also mentioned something about a “third party who wants to enter” during this conversation. The employees denied knowing anything about this subject.

The judge found that Campbell’s approach at Palm Garden, in which he attempted to speak with every employee, conveyed the impression that management was seeking to be responsive to their concerns. While noting that Campbell and Bone had not previously held such discussions with Palm Garden employees, the judge stressed that the reasons for the Respondent’s interest in the employees’ concerns is confirmed by the reference to the “third party” at the end of the conversation. In these circumstances, the judge concluded that the Respondent violated Section 8(a)(1) by suggesting to employees that management would react favorably to their grievances.

Contrary to the judge, I find that the record is insufficient to support a finding that the Respondent unlawfully solicited grievances and promised to remedy them. As the Ninth Circuit stated in *Idaho Falls Consolidated Hospitals, Inc. v. NLRB*, 731 F.2d 1384, 1386–1387 (1984):

Solicitation becomes an unfair labor practice [only] when [it is] accompanied by either an implied or express promise that the grievances will be remedied and under circumstances giving rise to the inference that the remedy will only be provided if the union loses the election.³

Here, either Campbell or Bone casually asked Gabeau and two other employees how they were doing on encountering them in the hallway. This greeting clearly was lawful as the judge specifically found. Furthermore, as stated, Campbell routinely speaks with employees at the St. Petersburg facility, and the existence of an election campaign should not require him to change his management style. Although the employees replied to the greeting and inquiry by voicing their concerns about the lack of personnel at Palm Garden, this complaint was not made in response to a direct request by the Respondent’s managers for employees to air their grievances. In this context, a truthful response to the employees that the Respondent was thinking of hiring more employees did not constitute a promise to remedy any grievances. The judge, in fact, found that the Respondent

hired four new employees between March 7 and 11. Since the incident occurred about March 10, it appears that the Respondent had already begun the process of employing some new workers before the Bone/Campbell interaction with Gabeau and others.

Therefore, the General Counsel did not establish that the Respondent’s officials either solicited any grievances or promised to remedy them in this case. They simply had a brief and innocuous conversation with unit employees during which the latter raised a job related complaint. By placing such a heavy burden of presumption on the Respondent, my colleagues would penalize it for truthfully responding to the employees’ comments. Moreover, the court in *NLRB v. K & K Gourmet Meats*, supra at 467, stated, “We do not believe that a general, implied promise that complaints will be considered is sufficient to support a finding of a Section 8(a)(1) violation.” In short, because the General Counsel has not linked the employees’ comments about needing more help with the Respondent’s hiring decision, I would find that the Respondent’s officials did no more than lawfully inform employees that it was considering the matter. Although in finding this violation the judge stressed that the Respondent alluded to the Union during this conversation, the mention of a “third party” in the manner raised hardly establishes that Bone or Campbell promised to remedy any grievances to deter the employees from unionization.

Shelly B. Plass, Esq., for the General Counsel.

Clifford H. Nelson Jr. and Regine N. Zuber, Esqs., for the Respondent.

David M. Prouty, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Miami, Florida, on June 16–19, July 14–17, and September 22–24, 1997. The charge in Case 12–CA–17986 was filed on May 3, 1996,¹ and the charge in Case 12–CA–18357 was filed on September 12, 1996. The order consolidating cases, consolidated complaint and notice of hearing was issued on January 30, 1997. The complaint, as amended at the hearing, alleges various violations of Section 8(a)(1) of the Act, the discharges of Leonard Ted Williams and Marie Sylvain in violation of Section 8(a)(3) of the Act, and violation of Section 8(a)(5) of the Act as a result of Respondent’s refusal to bargain with the Union. The 8(a)(5) violation is predicated on the request for a remedy that includes a bargaining order. Respondent’s answer denies all violations of the Act and, inter alia, affirmatively pleads that the Union never obtained majority status.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed

¹ All dates are 1996 unless otherwise indicated.

² The unopposed portion of the General Counsel’s motion to correct the transcript is granted. The portion of the General Counsel’s motion to which Respondent objects and Respondent’s motion to correct the transcript to which General Counsel objects are denied. The General

³ See also *NLRB v. K & K Gourmet Meats*, 640 F.2d 460, 466 (3d Cir. 1981) (employer does not violate the Act by merely expressing its willingness to listen and consider employees’ grievances).

by the General Counsel, Respondent, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, National Health Care, L.P., d/b/a Palm Garden of North Miami, a corporation, is engaged in the operation of a long-term geriatric nursing home at its facility in North Miami, Florida, where it annually derives gross revenues in excess of \$100,000 and purchases and receives goods and services valued in excess of \$10,000 directly from points located outside the State of Florida. The Respondent admits, and I conclude and find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I conclude and find, that UNITE (Union of NeedleTrades, Industrial Textile Employees, AFL-CIO, CLC) (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Preliminary Observations and Procedural Matters

This case arises in the context of an organizational campaign in which the Union sought to organize nursing homes in the Miami, Florida area. At its inception, the campaign utilized local media and some 50 organizers who handed out union literature at various nursing homes in the area, including Palm Garden. Palm Garden, a 120-bed long-term geriatric care facility, has over 100 employees.

Respondent is, and had been, opposed to its employees being represented by a labor organization. Its personnel manual states:

This is a non-union health center If you are approached to join a union, we sincerely hope you will consider the individual freedoms you could give up, and the countless risks you could be taking. *We intend to protect those freedoms and prevent those risks for you by opposing unionization of this health care center by every lawful means available.* We do not believe unions serve your best interest, the interests of patients, nor the interest of the health care center. (Emphasis in the original.)

In early January, union organizers first appeared at Palm Garden handing out leaflets. Thereafter authorization cards were solicited on behalf of the Union. On January 28, the Union filed a petition for an election, Case 12-RC-7931. Following a hearing held on February 8, the record of which I have taken notice, the Regional Director directed an election in a unit of Respondent's nonprofessional employees. The election was held on April 3. By corrected order dated April 16, the Board held that the unit found by the Regional Director was appropriate. The Board's order resulted in the challenges to six ballots being overruled. The final tally of ballots reflected 32 votes cast for the Union and 35 votes cast against the Union. The Union filed objections, and those objections were referred to hearing and consolidated with Cases 12-CA-17986 and 12-CA-18357.

In the weeks following the filing of the petition, Respondent's assistant vice president for partner relations, Harold Bone, assumed responsibility for the conduct of the Respon-

dent's antiunion campaign. He enlisted the services of the administrator of Respondent's St. Petersburg, Florida facility, Jerry Campbell, who had experience in opposing an organizational campaign at the St. Petersburg facility. Campbell, during the course of the campaign, spent several days a week at the Palm Garden facility. Respondent's regional administrator, Richard LaParl, provided operational assistance so that the Palm Garden facility administrator, Dian Johnson, would be "freed up . . . to run the campaign" with Bone and Campbell.

The complaint alleges that Cynthia Lewis, assistant bookkeeper, is a supervisor and agent of Respondent. Lewis was specifically included in the unit in the decision of the Regional Director and the Board. There is absolutely no evidence that she exercises any of the indicia of supervisory status set out in Section 2(11) of the Act. I find that she is not a supervisor. The record does establish that Lewis acted as an agent of Respondent when communicating with employees regarding wages and benefits. Her job duties included maintenance of payroll records. Additionally, she oversaw the filing and administration of employees' health benefits and workers' compensation forms. Employees regularly contacted her if they had questions about their pay. Lewis would often assist employees with forms required by governmental agencies that required verification of the amount of an employee's income, such as food stamp forms. Respondent had Lewis address employees regarding benefits at a company meeting held on January 18, shortly after the organizational campaign began. When determining whether an employee is acting as an agent, the Board is concerned with "whether, under all the circumstances, the employees 'would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management.'" *Southern Bag Corp.*, 315 NLRB 725 (1994); *Waste Stream Management*, 315 NLRB 1099, 1122 (1994). During the organizational campaign, Lewis held approximately four antiunion meetings with employees in late February and early March. Respondent was aware that Lewis was holding these meetings. Although Lewis made copies at a local copy shop of the leaflets that she handed out, she admitted that she made copies of the meeting announcements at the facility. Lewis, in 1996, regularly worked from 7:30 a.m. until 4:30 p.m. The antiunion meetings were scheduled for 3 p.m., when most of Respondent's day employees got off work. Although Lewis testified that she held these meetings on her own time, these meetings were held during her regular working hours, and Respondent permitted Lewis to leave work to conduct these antiunion meetings. Respondent's employees had been addressed by Lewis regarding benefits on January 18. I find that, at the antiunion meetings conducted by Lewis, Respondent's employees "reasonably believed" that Lewis was reflecting company policy and speaking and acting for management.

Respondent's answer pleads that Section 10(b) of the Act bars litigation of paragraphs 7 and 10, subparagraph b, of the complaint. Respondent does not raise this affirmative defense in its brief. Paragraph 7 alleges that Jerry Campbell engaged in interrogation, solicited grievances, promised benefits, and threatened loss of benefits and the freezing of wages. All of the foregoing alleged conduct is included in the charge in Case 12-CA-17986 which, having been filed on May 3, 1996, was within 6 months of the alleged violations. The charge does not state "interrogation," but it does contain an allegation of polling of employees regarding their support of the Union. Paragraph 10, subparagraph b, relates to the writing of warnings to Leo-

Counsel's motion and response to Respondent's motion are received into the record as G.C. Exh. 41, and Respondent's motion and opposition are received as R. Exhs. 23(a) and (b).

nard Ted Williams. Although the warnings were not separately alleged in the charge, the termination of Williams is alleged. The warnings were an integral part of the termination of Williams since, although they had not been presented to him, they were placed in his personnel file at the time of his termination. I find that no allegation is barred by Section 10(b) of the Act.

A number of Respondent's employees in the appropriate unit were born and reared in Haiti. Their first spoken language is Creole. Although Creole is also a written language, until about 7 years ago, the only official written language in Haiti was French. French was the written language that was taught in school. Various witnesses testified either to difficulty in reading, or inability to read, Creole. A Creole interpreter was requested both by the General Counsel and Respondent to assist some witnesses; however, even the witnesses who utilized the interpreter had some comprehension of spoken English. Several witnesses whose first language is Creole testified without a interpreter. Although their English was accented, their responses confirmed at least basic fluency in English. In the organizational campaign, the Union utilized organizers who themselves were Haitian or fluent in Creole. They spoke to employees in that language. Union literature and authorization cards were translated into Creole. Some of Respondent's campaign literature was translated into French; however, all of Respondent's oral communications to employees were in English. In considering the testimony of witnesses whose native language is not English, I have carefully evaluated their testimony, whether translated or given in English, while taking into account the "highly subtle distinctions of word choice and phrasing" that Respondent utilized in its presentations. See *Bakers of Paris*, 288 NLRB 991, 1000 (1988). For the most part, I have credited Respondent's witnesses regarding denials concerning what they did not say. In so doing, I am not finding, unless otherwise stated, that any employee testified untruthfully. Rather, I am satisfied that the employees testified to what they believed that they heard.

B. Facts

On Sunday, January 7, Facility Administrator Dian Johnson received a report that a union representative had been in the facility. On January 8 through 10, representatives from a number of Respondent's facilities, including Johnson, attended supervisory training in Orlando, Florida, that was conducted by Assistant Vice President Harold Bone. The program included training with regard to responding to increased union activity. On January 10, after consulting with her superiors, Regional Administrator Richard LaParl and Regional Vice President Michael Neal, Johnson decided to obtain services from a security firm to patrol the outside premises at the Palm Garden facility. On January 11, she contacted Wells Fargo. On January 12, she met with representatives of Wells Fargo and signed a contract that called for 16 hours a day of security services. Johnson had received no report of any recurrence of any union representative entering on Respondent's property. Respondent had not initiated patrols of its outside premises in late 1994, when an employee had been the victim of a purse snatching in the parking lot, or 1995, despite two instances of theft of automobile license plates, the breaking into a car resulting in the theft of a cellular telephone, and an assault on a private duty nurse. Simple trespass at the facility, which is near a railroad track, was not uncommon. Nonemployees had been found sleeping on the porch.

Beginning during the week of January 15, Johnson held a series of small group meetings with employees. At these meetings she informed employees that management had become aware of the Union's organizational efforts and that Respondent wanted the employees "to be informed about unions and the organizing process." She then presented a video featuring Assistant Vice President Bone. There is no allegation that the content of the video violated the Act. There is no credible evidence that Johnson, at these meetings, threatened closure of the facility and termination of employees if they voted for the union.³

Leonard Ted Williams began working full time at Respondent's facility on January 6, 1995. Prior to that, he had performed cleaning work for Respondent as an independent contractor. He was hired by Richard Thomas and was initially designated as a maintenance assistant and security employee. Thomas ceased to be employed in the summer of 1995, and Williams began reporting to Daryl Perez, housekeeping director. Perez ceased to be employed in October of 1995, and Williams began reporting to John Woodson, who had transferred to Palm Garden from another of Respondent's facilities in August 1995. Woodson was designated as maintenance director. Vera Lea was hired as housekeeping director, to replace Perez, on December 26, 1995. On January 2, Woodson and Johnson introduced Williams to Lea and informed him that she would be his supervisor. Thereafter, until his termination, Williams received daily assignment sheets from Lea.⁴

Williams normally worked from 3:30 p.m. until midnight. His duties included minor maintenance, such as touch up painting, replacing light bulbs, and unplugging stopped toilets. His security functions included checking the doors from the inside to be certain they were locked and escorting employees to their cars. This included employees who left work at about 5 p.m., and the nurses who left when their shift ended at 11 p.m. When called to escort an employee, Williams would cease performing his other duties. William considered this portion of his job, which took priority over his other duties, to be his primary responsibility even though it was not as time consuming as the other aspects of his job. Security duties took up to an hour and a half of a normal shift, about 20 percent of Williams' time. The bulk of Williams' time was spent performing housekeeping functions, including cleaning the dining room floor after the evening meal and the lobby after any evening activity, vacuum-

³ The General Counsel, at the hearing, amended the complaint to include these alleged threats, as well as threats of loss of benefits, termination, and closure attributed to Assistant Director of Nursing Thelma Levine at these same meetings. These amendments were predicated on the testimony of Marie Sylvain whose recollection I find, for the most part, to be unreliable. Thus I have not relied upon her testimony, except when it was corroborated or not denied. There is no corroboration that Johnson or Levine made any threats at this meeting attended by a number of employees. I credit Johnson's denial. Levine credibly denied making any threats or promises of improved benefits.

⁴ Lea, who is no longer employed, did not testify. Although both Woodson and Johnson testified that Williams was supervised by Woodson, neither was asked about the daily assignment sheets that Williams received from Lea. Woodson did not deny introducing Williams to Lea in early January and informing him that she would thereafter be his supervisor. I credit Williams. His demeanor impressed me throughout his testimony. Respondent's failure to explain why Williams was receiving assignment sheets from someone other than his supervisor suggests that there was no explanation because Lea was his supervisor.

ing hallways, and taking out trash.⁵ Other than escorting, Williams had no responsibility for patrolling the premises. Wells Fargo had no responsibility for security inside Respondent's buildings. From January 12 to 22, Williams remained responsible for assuring that all doors of the facility were secured from the inside. After his discharge on January 22, this responsibility was assumed by the nurses on duty.

Williams signed a union authorization card on Monday, January 15. He had spoken with his fellow employees about the Union prior to this time, and he continued to do so. Both Rosie Coe and Retha Glover confirm engaging in conversation regarding the Union with Williams while at the facility. About 2 weeks after the campaign began, sometime during the week of January 14 to 20, union organizer Josh Remis was at the back of the Palm Garden facility.⁶ Williams was coming into work, having about 5 or 6 minutes before he had to report. He stopped and talked to Remis. Remis gave him about six blank authorization cards. As Williams and Remis were talking together, both noticed John Woodson standing at the door of the maintenance shop looking at them. After Williams punched in at the time clock, he went to Lea's office, which is where he picked up his daily assignment sheet. Woodson "poked his head through the door and [said], '[Y]ou better watch it' very sternly."⁷

On January 19, when Williams reported to work and went into Lea's office to obtain his assignment sheet, he noticed the top portion of a supervisory adverse action sticking out of the desk blotter. He read the upper right hand corner, on which was written "Security-Maintenance 3:00 to 11:30," which was Williams' official shift, although not his actual working hours. Williams pulled the document out to examine it, and discovered a second supervisory adverse action. He made copies of these documents and then replaced them.

The first supervisory adverse action bears the date November 11, 1995. In the section reflecting the type of adverse action, three boxes are checked, those for a verbal warning, written warning, and final written warning. The name of the employee is blank. The statement of incident refers, *inter alia*, to a refusal to assist with "admission or transferring patient" and "abusive language." The document is signed by Woodson as immediate supervisor, and his signature is followed by the date November 26, 1995. Immediately under Woodson's name, signing as a witness, is the signature of Rodney Alvarez. Alvarez' signature is dated January 19, 1996. The line for the disciplined employee's signature is blank. The second supervisory adverse action bears the date December 13, 1995. Two boxes are

checked, those for a verbal warning and written warning. The name of the employee is blank. The statement of incident refers, *inter alia*, to a failure to "clean up lobby" and failure to "clean dining room and . . . take out trash." The document is signed by Woodson, whose signature is followed by the date December 13, 1995. This document bears the name of Gregory Williams as a witness. His signature, like that of Alvarez, is dated January 19, 1996. The line for the disciplined employee's signature is blank.

Williams recalled both incidents referred to on the documents. In the latter part of November 1995, prior to Thanksgiving, the admissions clerk, as she was leaving work, asked Williams to move a patient. Williams had been instructed by his original supervisor, Thomas, that he should never move a patient unless the proper paperwork had been completed. Williams sought to locate the paperwork. When he found no paperwork, he obeyed the instruction he had previously been given and took no action. The admissions clerk spoke with him at a later date regarding why he had not moved the patient, and Williams explained his prior instruction. No abusive language was used. Woodson never mentioned this matter to Williams. Regarding the second incident, Williams had, on a shift in early December, completed painting the lobby floor, a job that Woodson and employee Alvarez had begun. After finishing the job, Williams left the lobby blocked off so that the paint could dry. Williams also cleaned the dining room and took out the trash, but he had to stack it next to the dumpster because the dumpster was full. He was unable to empty the compactor in the kitchen because it had jammed after someone placed wet garbage in it. Woodson never spoke with Williams regarding his job performance on the evening that he had completed painting the lobby floor. At no time was Williams presented with a warning regarding either incident.

At the time of Williams' termination, Administrator Johnson directed that the two disciplinary notices be placed in his file, "so that his record would be as complete as possible." The documents placed in his file, however, differ from the supervisory adverse action documents that Williams had discovered. As they appear in his personnel file, both documents identify Ted Williams as the employee against whom the adverse action has been taken. The line for the employee's signature, which had been blank on the forms Williams found, contain notations that the employee refused to sign. The witness signatures of Alvarez and Gregory Williams, instead of being dated January 19, 1996, are dated December 13, 1995.

I credit Williams' testimony that he never received these warnings. When Woodson was asked if the warning bearing the date November 26, 1995 was discussed with Williams, Woodson testified "I was unable to catch up with him and discuss it. That's why it kind of lingered on." I find this testimony incredible. If, as Woodson contended, he prepared this warning in November 1995, and if Williams' conduct justified the issuance of a combination verbal, written, and final warning, there would have been no inability to "catch up" with Williams. He would, on reporting to work, have been directed to report to Woodson, and Woodson would have administered the discipline he allegedly had determined to impose. In later testimony Woodson asserted that Williams "was refusing to sign," but he never described the circumstances under which this alleged refusal occurred. Woodson testified that he made a copy of the warning, and gave the original to Johnson who suggested that he "get a signature to witness to the action that took place."

⁵ I do not credit the testimony of Johnson that Williams spent 80 percent of his time performing security work, or the testimony of Woodson that Williams spent 60 percent of his time performing security. Neither was present during the bulk of Williams' shift.

⁶ Remis testified that he was at the back of the facility about 2 weeks after the campaign began. Although he stated that he thought that it would have been about January 14, a Sunday, I find it more likely to have been sometime during the workweek. Williams placed the conversation in mid-January. Although he mentioned the January 13 and 14, he further testified that it was a couple of days after "this," which I find was a reference to the testimony relating to his signing the authorization card which immediately preceded his testimony regarding his conversation with Remis, thus placing the conversation about January 17 or 18. The specific date, insofar as it was prior to January 19, is not significant.

⁷ I do not credit Woodson's denial that he observed Williams and Remis talking together. Woodson was not questioned regarding the threat that Williams testified Woodson made to him in Lea's office.

Woodson testified that, after Johnson requested that he obtain witness signatures on the documents, he did so, but the documents disappeared.

Woodson was unable to credibly explain why the warnings that were placed in Williams' personnel file bear witness signature dates of December 13, 1995, whereas the documents Williams discovered bear witness signature dates of January 19, 1996. In responding to questions by counsel for the Charging Party, Woodson asserted that both witnesses had signed twice. When the two documents bearing the signature of Alvarez were placed before Woodson, he testified that Alvarez signed two different times and, referring to the document bearing the January 19, 1996 date, he testified that this was the first time Alvarez signed the document and that "was the one that got missing." When asked about when Alvarez signed the second time, Woodson referred to the document bearing the date December 13, 1995 stating that "he signed it here, but I don't—the date that he put there—. . . I mean, I don't—I don't know why he put it there, maybe because another action was written here." Thereafter, he altered his testimony and asserted that the first time the witnesses signed was on December 13, 1995. He asserted that both had signed twice and that he had not altered the dates.

I do not credit Woodson. Respondent, in its brief, argues that Williams stole the documents, and that no adverse finding should be made against Respondent since any confusion regarding the dates results from Williams' wrongful act. This argument ignores the fact that the documents Williams discovered bear witness signature dates of January 19, 1996. Woodson altered his testimony to assert that the witnesses first signed on December 13, 1995. If this was true, the documents that Respondent asserts Williams stole would have been the documents bearing witness signatures bearing the date December 13, 1995. Williams stole nothing. The documents Williams discovered and copied bear witness signature dates of January 19, 1996. The documents in his personnel file, produced pursuant to subpoena, bear witness signature dates of December 13, 1995. Examination of the documentary evidence convinces me that Respondent made copies of these documents after the witnesses signed them on January 19, as Woodson initially testified. In this regard, I note that the signature of Rodney Alvarez contains a small accidental gap at the bottom left of the capital "R" on both documents. I note that the "o" in the name Gregory stops exactly on the signature line of both documents, and that the initial "W" of Gregory Williams' last name dips just barely, but exactly the same amount, below the signature line on both documents.⁸

Counsel for Respondent, through questions to Woodson, established that the witnesses Woodson obtained were not signing as witnesses to Williams' signature, since Williams did not sign. Rather, the witnesses signed as witnesses to the incident. The witness to the incident relating to the alleged refusal to move a patient on November 26 is Rodney Alvarez. Respon-

dent's master payroll record reflects that Alvarez was first employed on November 29, some 3 days after the alleged incident.

On January 22, Williams received a telephone call from Lea. She asked if he could come in a little early to speak with her. Williams stated that he could and came to the facility. On his arrival he saw Lea speaking with Johnson at the end of the hall. On seeing Williams, that conversation ended, Lea greeted Williams, and they went into her office. Lea told Williams that she was sorry, that she hated telling him, but "she had to let my position go." She further explained that Respondent had "hired a security company, and they don't need your security anymore, and I'm not going to be able to have a night man again, so . . . there's nothing I could do about it." Lea stated that she "was pleased with" Williams' work and offered to give him a reference.

Johnson testified that she discussed the need for increased security with her superiors at a meeting on January 10. Regarding that meeting, her initial testimony was as follows:

Q: And what in regard to Mr. Williams came up in that meeting?

A: We did not feel that we were getting adequate security coverage from Mr. Williams, and that we needed also somebody to be outside the building.

Q: Was there any decision as to what, if anything, to do with Mr. Williams when a security company was brought in?

A: Not at that date.

Thereafter, Johnson changed her testimony and stated that the decision to abolish Williams' position was made at that January 10 meeting. I do not credit this testimony, nor do I credit Johnson's explanation that no action was taken with regard to Williams because the security company needed to become familiar with the facility, and "[w]e had other issues to deal with, and he was still working on security inside the building and also assisting with his other responsibilities." Williams' presence while the security company became familiar with the facility was immaterial since he had no responsibility for patrolling the premises. The inside security duties that he performed continued to be performed after his termination.

Maintenance Director Woodson was not consulted regarding the termination of Williams' position. He was told by Johnson, on January 22, that Williams would not be needed. Even though Woodson was, according to Johnson, Williams' supervisor, he did not inform Williams of his termination. Johnson initially testified that Lea informed Williams of his termination because Woodson was not going to be available and that "he had Vera do it." In later testimony she testified that "I had Vera [Lea] do it." (Emphasis added.)

Despite Lea's representation to Williams that she was not going to be able to have a "night man," Respondent hired William Delancy on January 26. Delancy's hours were from noon until 8 p.m., and his duties were chiefly housekeeping duties, including the evening duties that Williams had performed. Johnson acknowledged that Williams could have performed this unskilled job. Notwithstanding her assertion that Williams was terminated because the security position "was being abolished" and that was the only reason he was laid off, Johnson testified that she did not consider Williams for the position to which Delancy was hired because Williams' "job performance wasn't that good, and also he had another job." She later modified this to state that it was "my understanding that he was em-

⁸ Gregory Williams testified that he only signed once, that neither of the dates is in his handwriting, and that he does not recall the date that he signed, although he claimed that it was not shortly before Ted Williams was laid off. I have found, consistent with Woodson's initial testimony, that it was on January 19, 3 days before Ted Williams was laid off. Gregory Williams also testified that he was present at a meeting in which Woodson requested Ted Williams to sign the warning. This testimony is not corroborated by Woodson and is contradicted by Ted Williams. I do not credit it.

ployed elsewhere.” She did not seek to determine whether Williams would have been willing to work from noon until 8 p.m. Williams did perform work out of his home. He was not “employed elsewhere.”⁹

In late February, Assistant Director of Nursing Thelma Levine held a meeting of CNAs, including CNA Irvine Gabeau, at which Levine noted that she could see in the employees’ faces that they were not happy. She asked the employees if there were any problems, if something did not please them. The employees complained about the new director of nursing, Kathy DeGroat, who had been hired in late December. On February 25, a few days after this meeting, DeGroat was terminated. Levine, who is no longer employed by Respondent, was unaware of the circumstances relating to DeGroat’s termination. Levine acknowledged that throughout her employment she told employees that, if they came to see her with a problem, she would address it. She had no recollection of any specific complaint regarding DeGroat, but acknowledged that she regularly received complaints from the CNAs. Neither the Union nor the organizational campaign was referred to at the meeting Gabeau described.

About March 10, CNA Gabeau and two other employees were walking in the hall. They were approached by Campbell and Bone who asked the employees how they were doing. The employees responded “fine.” Campbell or Bone then asked about their job, and the employees indicated that they had a problem with not having enough people to work. Bone or Campbell responded that they were trying to see if they could hire more people. Either Bone or Campbell then mentioned hearing that that was a “third party who wants to enter,” and the employees responded that they did not know about that. Gabeau was unable to attribute specific statements to either Campbell or Bone.¹⁰ Between March 7 and 11 Respondent hired three CNAs and one restorative aide/CNA. Campbell confirmed that it was his practice to speak with employees and, when he did so, he would “ask them questions about how they’re doing, how their job is, how they’re being treated, those kind of things.” He acknowledged that Bone was sometimes with him. Neither denied the conversation to which Gabeau testified.

During the organizational campaign, CNA Marie Sylvain took a form necessary to establish her eligibility for food stamps to assistant bookkeeper Lewis. Lewis completed the form. As she was completing the form, Lewis told Sylvain that if the Union came in, “you will not bring it to me, you’ll bring it to the Union so they can do it for you.” In late March, Lewis and Supervisor Woodson were present in the employee parking lot as employees were leaving work. Union organizers, including Josh Remis, were handing out leaflets. As Remis handed a leaflet to one employee, Lewis said to the employee, “I thought you were my friend. If you need any help now, don’t come to me, go to the Union.” Lewis, although denying the incident in

the parking lot,¹¹ acknowledged telling employees that she would not assist them in filling out paperwork that she had previously assisted them with, specifically food stamp eligibility forms, if the Union came in. Although she asserted that this was not part of her job, she admitted doing it for as long as she had worked in the bookkeeping office.

On various dates in late February and March, Cynthia Lewis held a series of approximately four antiunion meetings at a park nearby the facility. At these meetings, she told employees, including Frances Tucker, that, if they selected the Union as their collective-bargaining representative, “things would be different for us, that wages would be frozen, benefits would be frozen.” Lewis acknowledges stating at the meetings that “Palm Garden can decide to hold raises, they can decide to stop certain benefits.”¹² Lewis also acknowledges telling employees that, if the Union did not come in, “Palm Garden will try their hardest to keep the employees happy.” There is no probative evidence that Lewis interrogated employees.¹³

On March 12 and 13, a Tuesday and Wednesday, Respondent scheduled a series of meetings designed to assure that employees on all shifts would be present. Five meetings were scheduled each day. On Tuesday, Dian Johnson introduced Bone and Campbell. Bone made some preliminary remarks and then showed the employees a video tape in which a fictional company and union pretend to engage in contract negotiations.¹⁴ Following the showing of the video, Bone and Campbell engaged in a purportedly mock negotiation specific to the Palm Garden facility. Bone assumed the role of company negotiator on behalf of Palm Garden and Campbell assumed the role of union negotiator on behalf of UNITE!. Campbell asked for more vacation days and holidays. Bone responded saying, “No, no, no.” Employee Rosie Coe observed Bone hit the table with his hand each time he said no. Campbell proposed an increase in the pay of CNAs to \$8.25 per hour. Bone responded that such an increase was “ridiculous.” He asked how Campbell proposed that he finance that, and Campbell responded that it was not his responsibility. Bone made no counter offer. At that point, Bone left. Campbell addressed the employees, pretending to have a caucus. He stated that in a caucus “what we would do is talk about proposals and counter proposals.” He further explained that, in a caucus “they would talk about the proposal and counter proposal, and that we, when we caucused, would [be] talking about what we were going to come back with the next day if he came back with a proposal.”

Prior to the Wednesday meetings with employees, Campbell brought to Bone’s attention a handout that the Union had published. The handout contained a list of 10 demands, including free medical and dental insurance, paid vacations and sick days,

⁹ I do not credit the uncorroborated testimony of Gregory Williams that John Woodson suggested to Ted Williams that he seek the department head of housekeeping job and that Ted Williams refused the suggestion because he had another job. Woodson never alluded to any such conversation, and Ted Williams credibly denied any such discussion.

¹⁰ A pretrial affidavit by Gabeau places this conversation in January, rather than early March. I find the discrepancy in the date immaterial since this undenied conversation clearly was after the petition. Campbell was not present at the facility until after the petition was filed.

¹¹ Lewis acknowledges telling the employee, “I thought you were on our side.” She denied making the threat of denial of assistance. I credit Remis, and I find that she did utter this threat.

¹² Lewis, in her testimony, began to embellish what she actually stated, noting that “it’s not a definite thing, but it can happen. They [the employees] can lose some stuff and things that can happen.”

¹³ The testimony of Sylvain that Lewis interrogated employees is uncorroborated, and I do not credit it.

¹⁴ No violation of the Act is alleged in the content of this video tape. The complaint, as initially issued, contained one allegation, attributed to Campbell, regarding the “freezing of wages for years.” There is no credible testimony of Campbell having made such a comment. The video tape contains the statement that “in a recent five year period fully two thirds of all union contracts had wages and benefits frozen . . . or reduced.”

and “an annual wage increase of more than 50 cents.” On being shown the handout, Bone responded, “What do you mean?” Campbell pointed out that the demand for a wage increase simply stated “annual wage increase of more than 50 cents;” it did not say 50 cents an hour.

At the five mock bargaining sessions on Wednesday, Bone made a counterproposal. Citing a document that purportedly related to Medicaid reimbursement, he offered “basic minimum wage.”¹⁵ Campbell responded that the proposal was ridiculous, “pounding on the table a little bit, and that kind of thing.” Campbell then stated that he had a list of union demands, referring to the handout, and called Bone’s attention to the demand of a 50-cent-annual increase, stating that “we were looking for a wage increase of fifty cents.” Bone asked if that was what he wanted. Campbell said, “yes.” Bone asked if he was sure, and Campbell again said “yes.” Bone then stated that it was “agreed,” and Campbell concurred that it was “agreed.” Thereafter, Campbell stated that he did not mean a 50-cent-annual increase, he meant a 50-cent-hourly increase. Bone responded, “[S]orry, we’ve had an agreement.”¹⁶

Following their presentation, Bone and Campbell addressed the employees. Campbell stated that, in negotiations, the parties had to be careful what they asked for and agreed to. Employee Pearline Jameson stated to Campbell that he was not aggressive enough. Campbell responded, “I did the best I could, and that’s what will happen in negotiations. You can’t always pick who you get.”¹⁷

At the hearing, both Campbell and Bone acknowledged that they were unaware of any circumstance in which a union had sought a 50-cent-annual wage increase.

Respondent does not have a traditional holiday and vacation policy. Instead, it has an Earned Time Off (ETO) policy. Employees with less than 1 year of service accrue an annual total of 10 days of ETO that may begin to be taken after working 6 months. Employees with between 1 and 3 years service accrue ETO at the rate of one and a quarter days a month, a total of 15 days a year. Employees who have insufficient ETO days may, for a good reason, be granted an unpaid leave of absence. In a memorandum to all employees dated November 4, 1994, Johnson reminded employees of various personnel policies. Regarding ETO it notes the requirement for “[p]rior approval from your Department Head and an approved ETO Request Form” and then refers employees “to pages 4, 5, and 6 of your Personnel Manual for ETO eligibility and scheduling.”

Page 6 of the Personnel Manual provides as follows:

The center’s needs to provide quality patient care along with your scheduling requirement for ETO days will be the governing basis for your Supervisor or Department Head being able to honor your request.

¹⁵ Respondent did not offer into evidence the document to which Bone purportedly referred.

¹⁶ I do not credit Bone’s testimony that the agreement was 51 cents. On cross-examination, Campbell acknowledged that, although the handout stated “more than” 50 cents, he had asked for 50 cents, not more than 50 cents. Bone testified after Campbell had testified.

¹⁷ Lewis attended the second day of the mock negotiations. She recalled Campbell requesting, and Bone agreeing to, the 50-cent-wage increase. “[T]hey were trying to explain how you can get tricked in a negotiation . . . [and] that this is what goes on during negotiation.” Sylvain’s testimony that, in the course of this meeting, Lewis said “yes,” several times, indicating her agreement with various statements, is insufficiently specific to warrant any finding of a violation.

Paula Berger, an admitted supervisor and licensed practical nurse (LPN), was in charge of the master schedule for CNAs in the nursing department in 1994, 1995, and the first several months of 1996. CNAs Retha Glover and Frances Tucker explained that, to take time off, a CNA would fill out a request and “give it to the person that was doing the schedule . . . Paula Berger.” This practice was confirmed by Johnson who, at the representation case hearing held on February 8, testified that Paula Berger had been performing scheduling for 3 to 4 years. When asked how an employee would handle a need to be off Johnson responded:

They’re to fill out a request for the time off and then given [sic] to the scheduling person and it’s looked at—I believe it’s looked at by the director of the nurses and the assistant director also.¹⁸

This practice changed sometime after April 30, 1 month after Vicki Chillon, a new assistant director of nursing, was employed.¹⁹ Paula Berger was employed by the Respondent at the time this hearing was held, having worked at Palm Garden for almost 9 years. She acknowledged that in 1996, from January to May, she was responsible for scheduling, a responsibility she no longer has. Consistent with the testimony of Johnson at the representation hearing, she confirmed that, in the course of her duties between January and May, she would receive written requests for time off and that she would, in turn, give these to the assistant director of nursing.

On April 3, the representation election was held. Marie Sylvain served as the observer for the Union. The following week, Sylvain went to Berger, accompanied by Irvine Gabeau, and told her that her child in Haiti was ill and that she needed a few days off. Sylvain was not scheduled to work on Wednesdays or Thursdays. Thus she was scheduled to be off on Wednesday and Thursday, April 17 and 18, as well as April 24 and 25. She requested 5 days, April 19 through 23. Berger asked Sylvain if she had prepared a written request. Sylvain had not. She did, however, have the proper document with her. Sylvain filled it out and signed it in Berger’s presence. The schedule that Berger was working with at that time only went through April 21. Gabeau confirmed that Berger circled the 3 days of the current schedule, April 19, 20 and 21, on a calendar on her desk. Berger told Sylvain that she could go.²⁰ Sylvain told Berger that Gabeau would be able to work in her place on the days that Gabeau was scheduled to be off and asked whether there was a need for her to find anyone else to fill in. Berger replied that there was not.

On April 25, upon her return from Haiti, Sylvain called the facility. She was advised that, although her name appeared on the schedule, it had been crossed off. On April 26, Sylvain called the facility and spoke with the new assistant director of

¹⁸ I do not credit Johnson’s attempt to change the testimony she gave at the representation case hearing regarding this procedure. In the instant hearing, Johnson asserted that the request had to be approved by an assistant director of nursing “before it would be given to the person preparing the schedule.” Her prior testimony, quoted above, was elicited at the representation hearing on direct examination regarding Berger’s involvement in scheduling.

¹⁹ Employee Frances Tucker learned of this change from other employees. She obtained permission from Chillon when she needed foot surgery in September 1996. She did not recall when the change occurred, other than “not long after” Chillon was employed.

²⁰ Berger, who was employed by Respondent at the time of the hearing, did not deny this testimony.

nursing, Chillon. She explained to Chillon that she had been told that her name had been crossed off. Chillon questioned where Sylvain was, and Sylvain responded that she had been to Haiti. Chillon asked who she had asked, and Sylvain explained that she asked Berger and that she had given her paper to Berger. Chillon stated that she had not seen the request and Sylvain asked her to call Berger. Chillon then explained that Berger was in the hospital, that Sylvain should wait and call the following Wednesday, May 1.

On May 1, Sylvain called the facility. Her call was referred to Chillon. Sylvain stated that she was calling to see if Berger was back. Chillon stated that Berger was not back and that she could not tell her anything, she had to wait for Berger's return. Sylvain said that she had bills to pay, she needed the job and that if she could not tell her anything, that she should schedule her. Chillon stated that she did not have to keep talking to her, that she had given "too much problem at this place." Sylvain questioned what she was talking about, and Chillon stated that she had heard that "you're the one who brought the Union to the work place. Chillon then told Sylvain that she did not have a job for her, that she was terminated."²¹

On May 1, Johnson signed a short letter informing Sylvain that she was terminated "for job abandonment relating to not following the procedure for requesting leave time." Sylvain does not recall receiving this letter. She does recall receiving a short letter from Johnson dated May 3 requesting that Sylvain call her. She did so. The following week, on or about May 10, Sylvain met with Johnson at the facility. She explained to Johnson that she had filled out the paper for time off, but, when she returned, her name had been crossed off the schedule. Sylvain further explained that she told Chillon that she had given Berger her paper and that Berger had said she could go. Sylvain informed Johnson that Chillon told her that Berger was in the hospital and that when she, Sylvain, had stated to Chillon that she could not wait to return to work until Berger came back, Chillon had said that "she heard I was going down to the place. I give too much problem. She don't have a job for me. She terminate me." Johnson stated that what Chillon had told her was "okay."²²

Although Johnson's signature appears on the May 1 letter informing Sylvain that she was terminated, Johnson testified that she "was not involved in the decision to discharge Marie Sylvain." There is no evidence that Johnson, after receiving Sylvain's description of the events surrounding her termination, engaged in any investigation regarding the explanation she received from Sylvain. Thus, on this record, there is no evidence that any management official disputed Sylvain's claim that supervisor Berger told her that she could take off the days she had requested.

In making the foregoing findings regarding Sylvain, I am mindful of various contradictions in her testimony, the most significant of which was her denial that she had not received any payment from the Union. Vouchers for per diem payments submitted to the Union by Sylvain establish that there were 25 occasions when she received such payments. Because of her less than candid testimony in this regard and her generalized attribution of various threats that are uncorroborated by other witnesses, I have carefully examined her testimony. In this regard, Sylvain's testimony regarding the circumstances sur-

rounding her termination are corroborated by other witnesses, and, most importantly, undenied by supervisors who were employed by Respondent at the time of the hearing.²³ Gabeau confirms that Sylvain went to Berger requesting time off. Berger did not deny that she told Sylvain that she could go. Johnson did not deny being made aware of the circumstances of Sylvain's discharge, including her claim that she received permission from Berger to be off on the days in question.

C. Analysis and Concluding Findings

1. The 8(a)(1) allegations

The complaint, as amended, alleges that Johnson, in mid-January, threatened to close the facility and terminate employees, and that Levine threatened loss of benefits and closure of the facility, threatened termination of employees who supported the Union, and promised benefits if they did not vote the Union in. I have found no probative evidence establishing these allegations, and they shall be dismissed.

The complaint alleges that John Woodson threatened an employee with unspecified reprisals. Woodson, after having observed Williams speaking with Remis, stuck his head into Lea's office, where Williams was picking up his assignment sheet, and sternly told him that he "had better watch it." I find, as alleged in the complaint, that this constituted a threat of unspecified reprisals in violation of Section 8(a)(1) of the Act.

The complaint alleges that Woodson prepared written warnings and placed them in an employee's file due to that employee's union activities, in violation of Section 8(a)(1) of the Act. I find that, on January 19, after Woodson had observed Williams talking with union organizer Josh Remis, Respondent created and backdated the two warnings for alleged offenses that had not warranted comment at the time they allegedly occurred. Confirmation of this finding is the signature of Alvarez as a purported witness to the alleged offense that purportedly occurred on November 26. Alvarez was not employed until November 29. Johnson testified that she had the warnings placed in Williams personnel file at the time of his termination "to assure that his file was complete." The preparation of discipline for alleged conduct that merited no action at the time, after Respondent became aware of Williams' union activity and following Woodson's threat that Williams "had better watch it," is clearly coercive and constitutes a violation of Section 8(a)(1). The complaint, at hearing, was amended to allege the placement of the documents in William's file as a further 8(a)(1) violation.²⁴ I so find and shall recommend the traditional Section 8(a)(3) remedy of removal of the warnings.

At the hearing, General Counsel amended the complaint to allege that Woodson engaged in surveillance. It is undisputed that Williams and Remis were in plain view, and that upon observing Woodson, they ended their conversation. In view of the layout of the facility, when Woodson came out the back door he was no more than 40 feet from Williams and Remis who were in plain view. I find no violation of the Act in these circumstances. *Hoschton Garment Co.*, 279 NLRB 565, 567 (1986).

²³ I draw no adverse inference from Respondent's failure to call Chillon since she is no longer employed. *Lancaster-Fairfield Community Hospital*, 303 NLRB 238 fn. 1 (1991).

²⁴ The record does not establish who actually placed the documents in the file. Whether Woodson, at Johnson's direction, or another person did so is immaterial.

²¹ Chillon is no longer employed and did not testify.

²² Johnson did not deny this conversation.

The complaint alleges that Assistant Director of Nursing Levine, in late February or early March, solicited employee complaints and grievances and promised employees increased benefits and improved terms and conditions of employment if they did not vote the Union in. Unlike the unprecedented presence of Administrator Campbell, who sought out employee concerns, Levine had historically met with, and sought to address the complaints of, CNAs under her supervision. Unlike Campbell, there is no evidence that Levine's inquiring if the CNAs had a problem constituted an alteration in her past practice. I find no violation of the Act in Levine's conduct. *House of Raeford Farms*, 308 NLRB 568, 569 (1992). There is no evidence that she promised increased benefits or improved conditions of employment.

The complaint alleges that Campbell interrogated employees, solicited employee complaints and grievances, and promised increased benefits and improved terms and conditions of employment. In early March, rather than January as alleged in the complaint, Campbell, accompanied by Bone, encountered Gabeau and two other employees. Either Campbell or Bone asked the employees how they were doing. I find no coercion, and hence no interrogation, in this transaction. This casual greeting was, however, an integral part of management's solicitation of employee complaints and grievances. Although Campbell would typically engage in discussions with individual employees regarding their working conditions and concerns, he had never done so at Respondent's Palm Garden facility. Certainly he and Bone had never done so together prior to the Union's organizational effort. Campbell acknowledged that he was assigned to go to the Palm Garden facility because of the Union's organizational efforts and his success in resisting unionization at the facility at which he was administrator. I find that his methodical approach, in which he admittedly sought to speak with every employee, clearly conveyed the impression of a management team that was seeking to be responsive to employee concerns. When the employees expressed to Campbell and Bone their concern relating to a lack of manpower, Campbell or Bone, without correction by the other, assured them that management shared their concern and was seeking to do something about the problem. The reason for management's interest in the concerns of the employees is confirmed by the reference to the "third party" at the end of the conversation. Additional CNAs were hired in early March. Thus, Respondent, through two management officials not normally present at the Palm Garden facility, clearly implied to its employees that "management would react favorably to the underlying problems that gave impetus to the organizational drive." *Kinny Drugs*, 314 NLRB 296, 299 (1994). In so doing, Respondent violated Section 8(a)(1) of the Act.

The complaint additionally alleges that Campbell, on various dates from January through March, promised employees benefits if they did not vote the Union in; from January through March, threatened to terminate union supporters; and on or about March 15, threatened closure of the facility. I have found no evidence that Campbell promised benefits if employees did not vote the Union in. Rather, as I have found, the promise of benefits was in response to his solicitation of grievances. There is no credible evidence of any threat of termination or closure.

The complaint, as amended, alleges that Cynthia Lewis, from mid-January until April, threatened to stop processing food stamp paper work of employees in retaliation for their union support, and promised employees improved terms and condi-

tions of employment if they did not vote for the union; on or about March 14, interrogated employees regarding their union sympathies, threatened employees with the freezing of wages if they voted for the Union, and impliedly threatened employees that it would be futile to have the Union represent them; on or about March 14 and 20, threatened changes, including the freezing of wages and benefits, if the employees voted for the Union; and on or about March 15, agreed with statements made by various supervisors regarding threats of loss of jobs, benefits, wages, overtime, and the freezing of wages. I have found no credible evidence of interrogation, threats of futility, or agreement with any specific comments of acknowledged supervisors by Lewis.

Respondent held Lewis out as its agent with regard to wages and benefits. Lewis informed employees that, if they selected the union as their collective-bargaining representative, she would no longer assist them in filling out paperwork, specifically food stamp forms, related to their earnings. The absence of this specific job duty in her job description is immaterial. Lewis acknowledged providing this assistance during her entire tenure as assistant bookkeeper. I find that Lewis threatened the loss of a benefit, assistance in filling out forms, in direct response to the employees exercise of their Section 7 rights. In so doing, Respondent violated Section 8(a)(1) of the Act.

At the meetings Lewis held in the park, Lewis threatened the freezing of wages and benefits. Even if I were to credit her testimony that she used qualifying language, stating that Respondent "could" freeze wages, Lewis does not contend that she based this comment on any objective economic facts. Thus, she "crossed the line between informing employees of potential adverse consequences of unionization and threatening that these consequences would occur in retaliation for their having selected the Union." *299 Lincoln Street, Inc.*, 292 NLRB 172, 173-74 (1988). Respondent had presented Lewis to its employees as its spokesperson in regard to benefits on January 18. Respondent permitted her to leave work in late February and early March to conduct antiunion meetings. When, in these meetings, Lewis spoke about wages and benefits, employees perceived her to be speaking on behalf of management. Respondent, by Lewis, threatened that it would freeze wages and benefits in retaliation for employee union activity in violations of Section 8(a)(1) of the Act. Similarly, when Lewis informed employees that if the Union did not come in, "Palm Garden will try their hardest to keep the employees happy," Respondent promised employees benefits in violation of Section 8(a)(1) of the Act.

The complaint alleges, in the context of the employee meetings at which Campbell and Bone participated in mock contract negotiations, that Campbell threatened loss of jobs, benefits and overtime, reduction of wages to the minimum wage, and that the Union would not get benefits for the employees and the Respondent would not give benefits. The complaint, as amended, alleges that Bone, at these meetings, threatened its employees with the freezing of wages and benefits if they voted the Union in and "impliedly threatened employees with the futility of voting the Union in."

Bone testified that he felt that a mock negotiation demonstration of "what these type of situations with Unions could lead to . . . was probably the best way in which to communicate" because of the "communication difficulties." Bone did not explain how he expected to overcome, rather than exacerbate, the "communications difficulties" by engaging in a mock bargain-

ing session conducted entirely in English without any translation. The record establishes that the mock negotiations did exacerbate the “communication difficulties,” with several employees, in testimony, having the roles played by Bone and Campbell reversed.

On the first day the mock negotiations, Bone responded, “No, no, no,” to all of the proposals advanced by Campbell, purportedly made on behalf of the employees by the Union. No counterproposal was offered. Thus, Respondent, by Bone, demonstrated an intransigent position that conveyed the impression of futility. This impression of futility was compounded on the second day of negotiations when Respondent, by Bone, offered its only counterproposal, reduction of wages to the minimum allowed under the law. In *Rexair Inc.*, 243 NLRB 876, 884 (1974), in which a similar scenario was played out, the Board found the offer of only minimum wage to be a threat to reduce wages in violation of Section 8(a)(1), and I so find in this case. Even if Bone’s counterproposal of minimum wage is not viewed as a direct threat to reduce wages, it clearly constituted a threat to bargain from scratch. Campbell told the employees after the purported mock negotiations concluded, “[T]hat’s what will happen in negotiations.” In so stating, Campbell informed the employees that Respondent would take the intransigent position that Bone had taken and threatened that, in real negotiations, Respondent would begin bargaining over wages at the minimum. Respondent left the impression that Respondent would not alter its position through good-faith bargaining, but would instead wait until the Union made a mistake. The effectiveness of Respondent’s communication is confirmed by Lewis who testified that the skit showed “how you can get tricked in a negotiation. . . [and] that this is what goes on during negotiation.” When an employer makes a statement that can be understood as a threat of loss of existing benefits and employees are left “with the impression that what they may ultimately receive depends on what the union can induce the employer to restore,” the employer has violated Section 8(a)(1) of the Act. *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980). Respondent left that impression in its mock negotiations, and in so doing, violated Section 8(a)(1) of the Act.

Neither Bone nor Campbell sought to depict the collective-bargaining process as conferring in good faith regarding employee wages, hours, and working conditions. Unlike the mock negotiations in *Days Inn Management Co.*, 299 NLRB 735, 740 (1992), the parties did not pretend to come to tentative agreement on various issues and pretend, after discussion, to reach impasse on wages. Rather Campbell, after Bone made the minimum wage proposal, resorted to “pounding on the table a little bit, and that kind of thing.” Campbell had, prior to the second mock session, informed Bone of his intended use of the union handout. At the second session, Campbell made no proposal for increased benefits, despite their presence on the union handout. Consistent with his plan to depict the Union as ineffectual, he requested an annual wage increase of 50 cents, to which Bone predictably agreed.

Respondent argues that the purported mock negotiations “presented to the employees a realistic example of how negotiations can work.” I disagree. Any pretense that the mock negotiations were presented as “a realistic example” was dispelled by Campbell immediately after the negotiating scenario was concluded. Employee Pearline Jameson informed Campbell that he was not aggressive enough. Campbell replied that he “did the best he could,” and “that’s what will happen in negotiation.

You can’t always pick who you get.” Campbell’s assertion that he did the “best he could” was a lie. He had determined, on Wednesday morning, to portray the Union as ineffectual. He made no demand for the increased benefits listed on the handout and, even accepting the obvious omission of the word “per hour” on the handout, Campbell sought 50 cents, not “more than 50 cents.” Both Bone and Campbell acknowledged that they were unaware of any Union that had negotiated a contract with an annual wage increase of 50 cents. Respondent’s conscious distortion of the bargaining process, followed by Campbell’s lie that he did his best, together with his assertion that “that’s what will happen in negotiations,” unlawfully communicated to virtually every employee in the bargaining unit that it would be futile to select the Union as their collective-bargaining agent. In so doing, Respondent violated Section 8(a)(1) of the Act.

The complaint alleges, and I have found, that Vicki Chillon informed Marie Sylvain that she was being terminated because she caused too many problems by bringing the Union into the workplace. This comment both revealed Chillon’s motivation in terminating Sylvain and threatened retaliation for engaging in union activities in violation of Section 8(a)(1) of the Act.

Dian Johnson did not testify regarding her conversation with Sylvain on or about May 10. When Sylvain met with Johnson, she attempted to explain the circumstances regarding her discharge. She reported her final telephone conversation with Chillon in which Chillon told her that she heard “I was going down to the place. I give too much problem. She doesn’t have a job for me, she terminate me.” Johnson responded that what Chillon said was “okay.” The complaint alleges that Respondent, by Johnson, “informed its employees that they were being discharged due to their union activities.” Although Johnson made no direct threat, her “okay” adopts rather than disavows Chillon’s comment. I find that Johnson understood Sylvain’s “going down to the place” to be the Union’s office and that Sylvain’s giving “too much problem” referred to Sylvain’s union activity. If Johnson had any doubt regarding to what “the place” referred, she would have asked Sylvain in that conversation or consulted with Chillon. She did not do so. If Johnson had any other understanding regarding Chillon’s comment about Sylvain’s going down to “the place” and causing “too much problem,” she had the opportunity to so state in the course of her testimony. She did not do so. Johnson knew that Chillon had discharged Sylvain because of her union activity. Her adoption of Chillon’s statement by telling Sylvain that what Chillon had said was “okay,” violated Section 8(a)(1) of the Act.

2. The 8(a)(3) allegations

a. The termination of Leonard Ted Williams

In assessing the evidence relating to the termination of Williams under the analytical framework of *Wright Line*,²⁵ I find that Williams did engage in union activity. Respondent, through Woodson, was fully aware of that activity; indeed, Woodson told Williams that he had “better watch it” immediately after he observed him talking to Remis. Respondent bore animus toward employees who engaged in union activity as confirmed by Woodson’s threat and the unlawful conduct in which I have found the Respondent engaged during the course of the campaign. Williams’ housekeeping job duties consumed

²⁵ 251 NLRB 1083 (1980), enf’d. 662 F.2d 899 (1st Cir. 1981).

the bulk, some 80 percent, of his working time. Respondent did not decide to terminate Williams when it engaged the services of Wells Fargo, which was hired only to perform duties outside the facility. Williams was not terminated until after he was observed talking with Remis. Woodson, the individual whom Respondent asserts was Williams' supervisor, was not consulted regarding the decision to terminate Williams. On January 22, the very date that Williams was terminated, Johnson informed him that Williams' services were no longer needed. I find that the General Counsel has carried the burden of proving that Williams' union activity was a substantial and motivating factor for his discharge.

Respondent has not proved that it would have taken the same action with regard to Williams if he had not engaged in union activity. The housekeeping duties that Williams had been performing continued to be performed after William was terminated. William Delancy was hired on January 26. Johnson, although testifying that the only reason Williams was terminated was because the security position "was being abolished," asserted that she did not consider Williams for the position to which Delancy was hired because Williams' "job performance wasn't that good, and also he had another job." As I have found, Williams did not have another job; he worked out of his home. Johnson made no effort to determine if Williams could report to work at noon, the time Delancy was assigned to report. Although Respondent asserts that Woodson remained as Williams' supervisor after Lea was hired, it is uncontroverted that Lea had been assigning his housekeeping duties since January 2. Lea told Williams that she was pleased with his work and would give him a reference. Johnson never consulted with Lea or Woodson regarding Williams' work. Rather, Respondent sought to create a paper trail reflecting upon his job performance by placing two bogus warnings in his personnel file at the time of his termination "to assure that his file was complete." Respondent, within a week of having observed Williams speaking with a union organizer, discharged him with no prior notice and no consultation with the maintenance director, who Respondent asserts was his supervisor, or the housekeeping director, who was giving him his daily assignments. Two days after Williams was discharged, Respondent hired Delancy. I find that Respondent has not established that Williams would have been terminated in the absence of his union activity. Respondent's precipitous discharge of Williams and his immediate replacement confirm that Williams was discharged because of his union activity in violation of Section 8(a)(3) of the Act.

b. The termination of Marie Sylvain

Sylvain was the union observer at the election held on April 3. Thus there is no issue as to her union activity and Respondent's knowledge of that activity. The record establishes Respondent's animus toward employee union activity, and Sylvain's testimony that Chillon told her that she had heard that "you're the one who brought the Union to the work place" and thereafter informed her that she was terminated is uncontradicted.

Respondent contends that Sylvain was terminated for job abandonment and that she would have been terminated in the absence of any union activity. In this regard, Respondent claims that Sylvain did not follow the proper procedure for requesting leave time." As set out above, I have found that Sylvain followed the exact procedure to which facility Administrator Johnson testified at the representation case hearing:

They're to fill out a request for the time off and then given [give it] to the scheduling person and it's looked at—I believe it's looked at by the director of the nurses and the assistant director also.

Respondent's brief acknowledges that the LPN in charge of scheduling "may have actually written the schedule and received requests for time off," but asserts that Berger did not have the authority to actually grant time off. Regardless of Berger's actual authority, the testimony of Johnson at the representation case hearing, as well as the testimony of Berger, confirms my finding that it was the practice of employees to submit requests for time off to Berger. Respondent's brief, although not admitting that the practice changed, refers to the testimony of employee Tucker and argues that requests for time off had to be submitted to the assistant director of nursing "after" Chillon became assistant director of nursing, noting that Chillon was hired on April 1. Tucker testified that the practice of giving requests for time off to Berger changed "[n]ot long after Vicki [Chillon] started to work there, but I don't know the exact month." Respondent does not cite the testimony of Berger. Berger testified that she did the scheduling from January to May of 1996, "I'm not sure if it included May." Sylvain received her approval in April.

Respondent, in its brief, asserts that Sylvain never claimed to have actually seen Berger sign the request for time off which she handed to her. Respondent does not, however, dispute that Berger, who Respondent did not call to testify, told Sylvain that she could take the time off that she had requested. Sylvain followed the same procedure she had always followed, the exact procedure to which Johnson had testified at the representation case hearing. When Sylvain sought to find out why her name had been stricken from the schedule, Chillon, on April 25, stated that she would have to check with Berger, further confirming that Sylvain followed the practice in existence at Respondent's facility. Respondent presented no evidence regarding when its procedure regarding submission of requests for time off to Berger changed. There is no evidence that, prior to Sylvain's discharge, Respondent had taken any action against employees who submitted requests for time off directly to Berger.

On May 1, Chillon had still not contacted Berger. Sylvain requested that she be scheduled and Chillon told her that she had given "too much problem at this place," that she had heard that Sylvain had brought the Union to the workplace, and that she was terminated. Johnson received Sylvain's explanation of what had occurred, including Berger's statement that Sylvain could take time off, but took no action to investigate. Failure to investigate an employee's claim that the employee has complied with a respondent's procedures is evidence of a discriminatory intent. *Hussman Corp.*, 290 NLRB 1108 fn. 2 (1988). Respondent has not established that it would have taken the same action in the absence of Sylvain's union activity. Chillon's statement at the time she terminated Sylvain confirms that Respondent discharged Sylvain because of her union activity in violation of Section 8(a)(3) of the Act, and I so find.

3. The bargaining order

The complaint alleges that Respondent violated Section 8(a)(5) of the Act by failing to recognize and bargain with the Union since February 22. There is no evidence of any request to bargain, thus there is no basis for finding an 8(a)(5) violation. *Peaker Run Coal Co.*, 228 NLRB 93 (1977). Rather, the

issue is whether Respondent's unfair labor practices are so serious and substantial that Respondent should be ordered to bargain with the Union. Prior to addressing this issue, I must determine whether the Union attained majority status in the appropriate unit that was thereafter eroded by the Respondent's unfair labor practices.

The Board directed the election in the following unit:

All full-time and regular part-time employees of the Employer at its North Miami, Florida nursing home, including employees employed in the Dietary, Housekeeping, Laundry, Maintenance and Activity Departments, Certified Nursing Assistants (CNAs), Central Supply Clerk, Physical Therapy Aides, Restorative Aides, Receptionist, Assistant Bookkeeper, Medical Records Unit Clerk, Administration Department Clerk, Social Work Assistant and Admissions Clerk; but excluding all licensed practical nurses, managerial and professional employees, guards and supervisors as defined in the Act.

At the hearing, General Counsel amended the complaint to allege that the appropriate unit not include the assistant bookkeeper, Cynthia Lewis, and social work assistant, Eliud Acosta. Both of these positions are specifically included in the description of the appropriate unit as found by the Board. The General Counsel, without comment in her brief, appears to have abandoned the position she took when amending the complaint since she includes Acosta in the unit. Without referring to the amendment, she argues that Lewis does not share a community of interest with the unit employees. In finding the above unit appropriate, the Board specifically included Lewis, stating that "although her duties are in the nature of business office clerical duties, she apparently would be the only remaining unrepresented non-professional" and that "exclusion from the unit would effectively deny her the opportunity to obtain representation." The General Counsel does not cite the Board's decision in arguing for the exclusion of Lewis. I have found that Lewis is not a supervisor. Although Lewis was an agent of the Respondent, this does not negate her status as an employee. In *KAL Contracting Co.*, 284 NLRB 722 (1987), employee Griffin was found to be an agent but, thereafter, is listed by name as being included in the appropriate unit. *Id.* at fn. 17. Thus, in accord with the decision of the Board, I find that Lewis is appropriately included in the unit.

On the General Counsel's amendment of the unit to exclude the assistant bookkeeper and social work assistant, Respondent withdrew its admission to the appropriateness of the unit, and again advanced its contention that there should be a finding of the supervisory status of the licensed practical nurses, the same contention it made throughout the representation proceeding. Having rejected the General Counsel's proposed exclusion of Lewis from the unit, there is no need to address Respondent's reintroduction of the supervisory issue since it was disposed of by the Board. I find the unit designated by the Board to be appropriate.

The appropriate unit includes all nonsupervisory employees in departments 3, 6, 14, 26, 30, 34, 38, 42, 46, and 50. The *Excelsior* list, dated March 13, contains 71 names. Comparison of this list with the payroll reveals that all of these employees, except for Wayne Jones, were employed when the election was held on April 3. Jones ceased his employment on March 12. Marie Antoine, whose name appears on the *Excelsior* list, was not hired until February 23. Thus, as of February 22, the date that the General Counsel alleges the Union attained majority

status, the unit consisted of 71 employees, 70 on the *Excelsior* list, plus Ted Williams. As of this date, a maximum of 37 cards had been signed, assuming the authenticity and validity of all cards.²⁶ Although Respondent argues that it did not stipulate that the *Excelsior* list was coextensive with the employees in the unit, its calculations regarding the size of the unit are based upon that list plus new hires, less terminations, as reflected on its "Alphabetical Listing by Calendar Year of All Employees."²⁷

Counsel for the General Counsel, in her brief, contends that the unit consisted of only 69 employees on February 22. Her list of employees mistakenly included Marie Antoine who was hired on February 23. It omits Lewis. Without comment or argument, General Counsel does not list employees Justin Kanner and Rodney Alvarez. At the election held on April 3, the Union challenged the ballot of Kanner, contending that he was a confidential employee; however, no evidence was adduced at the hearing establishing that he was a confidential employee, and his position, central supply clerk, is specifically included in the unit description. Maintenance employees are specifically included in the unit, and Alvarez was a maintenance employee who, as noted above, was hired on November 29, 1995. I have already found no basis for the exclusion of Lewis, and I find no basis for the exclusion of Kanner or Alvarez. In view of the foregoing, I find that the appropriate unit, as of February 22 consisted of 71 employees. For the Union to have a majority, at least 36 of the 37 cards purportedly signed before February 22 must be found to constitute valid designations of the Union as the exclusive bargaining representative of the unit employees.

At the hearing, I admitted an authorization card purportedly signed by Anita Iscar that bears the date January 6. At that time, I did not have the entire record before me. The predicate for my admission of this card was the testimony of Marie Sylvain, whom counsel for the General Counsel recalled to testify regarding the purported delivery of this signed card to her by Iscar. Sylvain testified that she gave the card to Iscar and that, when she returned it, it was completely filled out, including the date, January 6. In examining the card purportedly signed by Iscar, I note a striking similarity between the writing on that card and the writing on Sylvain's authorization card. I particularly note that an extra loop that looks like a small "o" appears at the top of the number 9 wherever it appears on both cards, that a loop appears at the beginning of the number 2, and that, when the words "Palm Garden" are written in script, the word "garden" begins with a lower case letter. Sylvain, however, did not testify to assisting Iscar in filling out her card. Sylvain, in a pretrial affidavit, reported receiving only two authorization cards, the cards of Mirelle Denis and Irema Geneve. Although Sylvain initially denied placing her name as a witness on those cards, her name, in fact, does appear as a witness on them. Syl-

²⁶ Respondent hired 3 new employees on February 23, increasing the unit to 74. An additional card was signed on February 29, increasing the potential card total to 38. Respondent hired 1 additional employee on March 7, and 3 more employees on March 11, increasing the unit to 78. The potential card total never exceeded 38. Jones' employment ended on March 12, and Martha Laguerre did not sign a card until March 31.

²⁷ Respondent stipulated to the authenticity of the document insofar as it reflected all employees working as of November 7, 1996. Thereafter additional stipulations were received relating to the dates of employment and termination as reflected on that document. There is no contention that any unit employee does not appear on that document.

vain did not place her name on Iscar's card as a witness. Sylvain testified that she received the card from Iscar "after" Denis and Geneve gave her their cards, "I take two before and after that Anita." The card of Denis is dated January 22, and the card of Geneve is dated January 14. Thus the card Sylvain purportedly received from Iscar was delivered on or after January 22. A Nursing Home Contacts report maintained by the Union reflects that the Union obtained Iscar's address from an authorization card that, according to the report, was dated January 9. Since there is only one card from Iscar in evidence, it would appear that this is a clerical error and that the report is referring to the card dated January 6. The report also reflects an attempted house call to Iscar on January 16. Since there are no handwritten comments on the report, I cannot determine if Iscar was actually seen. Insofar as the attempted house call occurred on January 16, utilizing the address on a card dated January 6, that card cannot be the card that Sylvain purportedly received "after" the cards of Dennis and Geneve. The only predicate for my admission of the Iscar's card was Sylvain's testimony of receipt of the completed signed card. Having reviewed the complete record, I find that the card I admitted into evidence is not the card about which Sylvain testified. Sylvain testified she received the card after the cards of Denis and Geneve, thus it was after January 22. Iscar's card is not mentioned in Sylvain's affidavit relating to the cards of Dennis and Geneve, cards that she signed as a witness. Her name does not appear on the card purportedly signed by Iscar. A card dated January 6 purportedly signed by Iscar was in the Union's possession prior to January 22. There is no evidence of any other card. I do not credit Sylvain's testimony.²⁸ Accordingly, I reverse my ruling that the card dated January 6 purportedly signed by Anita Iscar was properly authenticated. I find that it has not been authenticated, and it shall not be considered in determining the Union's majority status.

The General Counsel and the Charging Party argue that all authenticated cards should be counted when determining the Union's majority status. Respondent objected to the admission of all but three cards at the hearing. In its brief, Respondent objects to the validity of all of the cards arguing that the cards are ambiguous. The English card clearly states that the signer joins the Union and authorizes UNITE! to represent the card signer. I find no ambiguity in this language, nor do I find that any representation on the back of the card contradicts or renders this language ambiguous. The statement, "When we negotiate our contract, we will start from where we are now and negotiate MORE. We will not lose anything we now have," is an optimistic representation of the Union's intention. It does not affect the validity of the card. Respondent further argues that some employees signed cards in languages that they could not read, that the signatures of some employee were procured after the alleged misrepresentation that there would be an election, and that some employees were hurried when they signed their cards. I give no credence to testimony relating to alleged hurried signatures. Regarding alleged comments relating to an election, numerous cases have held that the mention of an election does not affect the validity of a single purpose card. *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968). There is no evi-

dence that any employee was told that the sole purpose of the card was for an election.

A more difficult issue is presented by the evidence that several employees signed cards in languages that they could not read. Board cases holding that authenticated single purpose authorization cards will be counted toward establishing a union majority, unless the language on the single purpose authorization card is deliberately canceled by a solicitor, assume that the card is written in English and that the card signer has the ability to read English. *Maximum Precision Metal Products*, 236 NLRB 1417, 1425 (1978). When a card signer is illiterate, or has no ability in English, it must be established that the card signer knew what he was signing and in fact authorized the Union to represent him." *Brancato Iron Works, Inc.*, 170 NLRB 75, 81-83 (1968). There must be evidence that the card was translated or explained so that the card signer "understood the meaning and purpose of an authorization card." Unless it is established that the signer intelligently designated the Union as collective-bargaining representative, the card in question "cannot be counted toward establishing the Union's majority support." *Food Cart Market*, 286 NLRB 1016, 1017 (1987).

The Board's presumption relating to the ability to know and understand the content and purpose of a card written in ones native language applies both to English cards and to cards written in the native language of the card signer. *Limpert Bros.*, 276 NLRB 364, 368 (1985). In this case, 13 of the signed cards are written in Creole. I have, in the absence of evidence to the contrary, assumed that the employees who signed these cards are literate in their native language and that Creole is the native language of those card signers.²⁹

Respondent specifically attacks the validity of 11 cards, one of which was the card of Iscar which I have found was not properly authenticated. Six of the remaining cards to which Respondent objects were admittedly signed by employees who were fluent in the language appearing on the card.

Robert Garcia testified that, when approached by union solicitors to sign "a card," he was in a hurry "to get out of there" and did not read the card. Contrary to the impression that Garcia was unaware of the significance of his act, a Nursing Home Contacts report contains a handwritten notation that, at a house visit on January 16, Garcia stated that he had "changed his mind." There is no evidence that Garcia sought the return of his card. I find this card valid.

Sofia Laguerre testified that she did not read the card, written in Creole, that she signed in the parking lot. She acknowledged that she reads Creole. She testified that she did not read the card because she was in a hurry to get home; however, notwithstanding her alleged haste, she remained after signing the card since she testified that she witnessed the solicitor of the card place his name on it as a witness. This card was signed on February 29, well into the Union's organizational campaign. There is no

²⁸ The General Counsel's brief does not address the date discrepancy or Nursing Contact Report. There is no suggestion that Sylvain's testimony of having received whatever document she purportedly received "after" January 22 was in error.

²⁹ Although the Creole cards, like the English cards, reflect the employee's agreement to join the Union and authorize the Union to represent the card signer, the language is not a model of clarity. The testimony of Enel Diamond, an expert translator, confirmed that Creole is less sophisticated than French. The phrase "terms and conditions of employment" does not literally translate from Creole; thus, the card states, "I authorize UNITE! . . . to represent me in negotiation according to the condition and regulation of the Employer." Although I find this language sufficient, it would appear that translation into French, the school language of the native Haitian employees, would provide a superior translation.

claim of any misrepresentation as to the meaning or purpose of the card. I find this card valid.

Marie Milcent testified that she read the card, which she found in her mailbox, before she signed it and mailed it to the Union. Milcent reads Creole with a "[l]ittle bit, not too much difficulty." I find that Milcent would not have signed a document that she did not understand. I do not credit her testimony that she did not understand what "Union" meant, or that she believed it meant "quit Union," or "credit Union" as argued by Respondent. I do not credit her testimony that she signed and mailed a document she did not understand. Union organizer Charles H. Lundy, who witnessed the signing of Milcent's card and whom I credit, testified that he obtained the card during the course of a visit to Milcent's home. I find this card valid.

Marie Noel testified to a somewhat bizarre situation in which she signed a card at the behest of an unknown nonemployee inside the facility. She acknowledged signing another card after being requested to do so by Union Representative Jean Demosthene. This is confirmed by a Nursing Home Contacts report and Demosthene's initials on the card that is in evidence. I credit his testimony that he solicited this card at Noel's home. There is no evidence of any misrepresentation by Demosthene. I find this card valid.

Jacqueline St. Fleur testified that she signed a union card when a union representative visited her at her home. Josh Remis testified that St. Fleur signed a card at a union meeting, and documentary evidence confirms she attended at least two union meetings. Where she signed the card is immaterial. Contrary to Respondent's argument in its brief, there is no evidence that St. Fleur did not understand the purpose of the card. The solicitor's statement that they were "going to have like a vote" was not a misrepresentation. I find this card valid.

Francis Wanton Tucker testified to signing of her card and to various incidents alleged as violations of Section 8(a)(1) of the Act. Respondent, citing testimony by union organizer Josh Remis, argues that Tucker did not understand the meaning and purpose of the card she signed. Remis never testified to any statement made by Tucker reflecting any lack of understanding; rather, he reported his conclusory perception. There is no probative evidence that Tucker did not realize the nature and purpose of the card that she signed, after reading it. There is no evidence of any misrepresentation. Counsel cross-examined Tucker regarding her testimony relating to the alleged violations of the Act, but he chose not to question Tucker regarding her signing of the authorization card. I find this card valid.

I find that the following cards, all of which bear signatures authenticated by the respective card signers who testified as witnesses either for the General Counsel or Respondent, and none of which were the product of any misrepresentation, constitute valid designations of the Union:

Annie Apollon	Myrtha Perard
Rosie Coe	Ester Permission
Marie Etienne	Jeanne Petit-Homme
Irvine Gabeau	Winifred Reid
Retha Glover	Isalia St. Jean
Wayne Jones	Marie Sylvain
Mavis Lewis	Leonard Ted Williams

I find that the following cards, authenticated by solicitors, constitute valid designations of the Union.

Ana Coissy	Guerda Paul
Solonges Denard	Marie Pierre

Maria Dorcena	Marie Pouca
Marie Fills	Wilma Torshon
Martha Joseph	Lexillia Zapote
Martha Laguerre ³⁰	

I find that the following cards, authenticated by the handwriting expert, constitute valid designations of the Union.

Irema Geneve
Pearline Jameson
Dulia Isaac ³¹

The remaining four cards require separate discussion.

Marie Cenatus is Haitian and her native language is Creole. She speaks Creole and accented English. Her ability to read English is minimal. The card she signed, dated February 17, is written in English. She did not read it. Prior to signing the card, she had heard, on the radio, reference to the *syndicat*. The *syndicat* people on the radio stated they were "there to help everybody who was working, or workers, and all black people . . . [at] all the nursing homes." Union organizer Jean Demosthene solicited a card from Cenatus. He spoke to her in Creole and represented that he was from the *syndicat*, and was seeking to provide help for all those who worked for nursing homes.³² When she signed the card, Cenatus "knew it was '*syndicat*.'" Although *syndicat ouvrier* is the French term for trade union, there is no evidence that Cenatus had any familiarity with the term prior to hearing it on the radio. At the time she signed the card, she did not understand that she was taking an action specific to Palm Garden. When asked if the solicitor referred to organizing Palm Garden, Cenatus testified that "[he] did not say Palm Garden employees. It [sic] [he] say all the nursing homes." When asked if the solicitor explained what the card would be used for, Cenatus answered, "To help all workers who are working in nursing homes." There is no evidence that, when Cenatus signed the English card, she understood that she was authorizing the Union to represent her at Palm Garden, or that she was accepting membership in an organization that had a dues obligation. *City Welding & Mfg. Co.*, 191 NLRB 124, 137 (1971). After consulting a dictionary, Cenatus discovered that the English card, which she had not read, referred to a dues obligation. Cenatus called the Union, stating that she did not "want this program," but "[t]hey tell me we still got the program." Although Cenatus testified she now understands that

³⁰ This card was signed on March 31.

³¹ Counsel for Respondent, in brief, argues that the handwriting expert's identification is inconclusive since there was no stipulation that the documents he used for signature comparison, including job applications and W-4 forms, bore genuine signatures. At the time these exhibits were being assembled, the General Counsel represented that they had been provided pursuant to subpoena, and Respondent's counsel confirmed, on the record, that this was correct. The act of production pursuant to a subpoena constitutes "implicit authentication." *U.S. v. Lawrence*, 934 F.2d 868, 871 (7th Cir. 1991), cert. denied 502 U.S. 938 (1991). Respondent raised no objection at the hearing to the authenticity of these documents that it produced pursuant to subpoena.

³² Demosthene testified that when Cenatus signed the card written in English, she "read the card again." Cenatus denied that she read the card. The testimony regarding reading the card "again" casts doubt upon Demosthene's earlier testimony that Cenatus was present when he solicited a card from Marie Dorcena, to whom he says he read the card. If this were true, there was not a prior occasion when Cenatus read the card. Cenatus did not acknowledge hearing the card read. I credit Cenatus that she was unaware of what the card said until she went to a dictionary.

UNITE! is a *syndicat*, her current understanding is not relevant. The record does not establish that Cenatus authorized the Union to represent her at the time she signed a card.

Mirelle Denis, whose native language is Creole, purportedly signed two authorization cards, one dated January 22 written in Spanish and one dated April 4 written in English. This latter card was never authenticated. There is no evidence that Denis is fluent in Spanish. The General Counsel sought to authenticate these two authorization cards that purport to bear her signature through a handwriting expert. The expert was unable to do so, testifying that, due to the simplicity of the handwriting, he could not testify that Denis signed the cards or that it was "highly probable" or even "probable," i.e., more likely than not, that she did so. After the handwriting expert failed to authenticate either card, I received the card dated January 22 on the basis of the testimony of Sylvain who had, in her testimony regarding Iscar's card, testified that Denis handed her the card, unsigned, at the same time as did Irema Geneve. Sylvain handed the cards back, requesting that they sign the cards. There is no testimony establishing that there was any explanation of the purpose of this card which is written in Spanish. In the absence of evidence that Denis, a native speaker of Creole, received any explanation regarding the card, I have no basis for finding that she understood the meaning or purpose of the authorization card and "intelligently designated the Union" as her representative. *Maximum Precision Metal Products*, supra at 1425. Thus, I cannot find that her card is valid.

Rosa Liriano is Hispanic. She speaks Spanish and a little English. She speaks no Creole. On January 8, an employee who worked in the nursing department, whose name Liriano cannot recall, approached her and presented her with an authorization card written in Creole. Liriano did not recognize the language. The solicitor told Liriano that the card was "a program so we could have more working hours and a better salary." The word Union was not mentioned. Liriano signed the card. There is no evidence that she understood that by signing the card she accepted membership in a labor organization or authorized the Union to represent her. She could not read the card. Signing up for an unidentified "program" for more hours and a better salary does not constitute an authorization for representation. *Hollander Home Fashion Corp.*, 255 NLRB 1098, 1102 (1981). The card signed by Liriano is not valid.

Annie Whitest does not read Creole. On January 11, employee Annie Apollon gave Whitest a union authorization card written in Creole. Although Whitest testified that Apollon "read it off to me in English," Apollon testified that she had no conversation with Whitest when she gave her the card. This conflict in testimony is immaterial since it is clear that, regardless of what Whitest thought, Apollon did not read the card in English. Apollon "can read it [Creole] slow," but she "cannot really translate." Whitest did not testify to what Apollon actually said. Even if I assume that Apollon, contrary to her recollection, said something, it was not a translation. Whitest, in conclusory terms, stated that after Apollon supposedly read the card, she understood that "the Union would give us better benefits, and our salary would be better. That's the way I understood it." There is no evidence that Whitest, in signing a card written in a language that she could not read, understood that she was accepting membership in a labor organization and authorizing that labor organization to represent her. *Gate of Spain Restaurant Corp.*, 192 NLRB 1091 (1971). The card written in Creole,

which Whitest does not read, is not a valid designation of the Union as her collective-bargaining representative.

In view of the foregoing, I find that on February 22 the Union had obtained valid designations as the employees' collective bargaining representative from 32 employees. This does not constitute a majority of the 71 employees that were in the unit on that date. The Union did not obtain a majority at any later date. In these circumstances, a bargaining order would be inappropriate.

4. The Objections

I have found that, after the petition was filed and prior to the election, the Respondent engaged in violations of Section 8(a)(1) of the Act. This conduct parallels various objections to the election filed by the Union. Objection 1 alleges the threatened loss of wages and benefits, objection 3 alleges threats of the freezing of wages, objection 4 alleges a threat to reduce wages to minimum wage, objection 5 alleges the solicitation of grievances and promise to remedy them, and objection 6 alleges the promise of benefits if employees did not select the Union as their collective-bargaining representative. My finding that Respondent advised employees that selection of the Union as their collective-bargaining representative would be futile is encompassed by objection 11 which alleges other acts.

I find that the foregoing violations of the Act that occurred during the critical preelection period and correspond to the Union's objections interfered with the employees' free choice of representation and that the election must be set aside and a new election held.

CONCLUSIONS OF LAW

1. By threatening employees with unspecified reprisals, preparing and issuing written warnings, soliciting grievances and promising to remedy them, and informing employees that they have been terminated because of their support of the Union; by threatening the loss of benefits and the freezing of wages and benefits if employees select the Union as their collective-bargaining representative; by promising employees benefits if they refrain from union activity; and by threatening to reduce employee wages to the minimum wage and advising employees that selection of the Union as their collective-bargaining representative would be futile, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging Leonard Ted Williams and Marie Sylvain the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Leonard Ted Williams and Marie Sylvain, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent must post an appropriate notice. In view of the diversity of the work force, I recommend that the notice be translated into both French and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³³

ORDER

The Respondent, National Health Care, L.P. d/b/a Palm Garden of North Miami, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals, preparing and issuing written warnings, soliciting grievances and promising to remedy them, and informing employees that they have been terminated because of their support of the Union.

(b) Threatening the loss of benefits and the freezing of wage and benefits if employees select the Union as their collective-bargaining representative.

(c) Promising employees benefits if they refrain from union activity.

(d) Threatening to reduce employee wages to the minimum wage and advising them that selection of the Union as their collective-bargaining representative would be futile,

(e) Discharging or otherwise discriminating against any employee for supporting UNITE! (Union of Needle Trades, Industrial Textile Employees, AFL-CIO, CLC), or any other union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of this Order, offer Leonard Ted Williams and Marie Sylvain full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Leonard Ted Williams and Marie Sylvain whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Remove from its files the written warnings issued to Leonard Ted Williams that were placed in his file on or after January 19, 1996.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility at North Miami, Florida, copies of the attached notice

marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 17, 1996.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS ALSO ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the election is set aside and Case 12-RC-7931 is severed from Cases 12-CA-17986 and 12-CA-18357 and remanded to the Regional Director to conduct a second election when she deems the circumstances permit a free choice.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with unspecified reprisals or solicit grievances and promise to remedy them in order to discourage your support of UNITE! (Union of Needle Trades, Industrial Textile Employees, AFL-CIO, CLC), or any other Union.

WE WILL NOT threaten you with the loss of benefits or the freezing of wages and benefits if you select the Union as your collective-bargaining representative.

WE WILL NOT promise you benefits if you refrain from union activity.

WE WILL NOT threaten to reduce your wages to the minimum wage or advise you that selection of the Union as your collective-bargaining representative would be futile.

WE WILL NOT discharge or warn any of you for supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

³³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL remove from our files the written warnings issued to Leonard Ted Williams that were placed in his file on or after January 19, 1996.

WE WILL , within 14 days from the date of the Board's Order, offer Leonard Ted Williams and Marie Sylvain full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and

other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL , within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Leonard Ted Williams and Marie Sylvain, and WE WILL , within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

NATIONAL HEALTH CARE, L.P. D/B/A PALM
GARDEN OF NORTH MIAMI